

21 C.J.S. Courts § 260

Corpus Juris Secundum | May 2023 Update

Courts

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VIII. Concurrent and Conflicting Jurisdiction

A. Courts of Same State

2. Transfer of Cases

a. In General

§ 260. Transfer of cases, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, Courts  483, 486

State constitutional provisions, statutes, or rules authorizing or requiring the transfer of cases from one court to another within a state are designed to prevent a case from being totally precluded because the case was brought in the wrong court.

Unless expressly authorized so to do, a court has no authority to transfer a case from itself to another court,¹ even where the other court would have had jurisdiction to hear the case.² Where an action is brought in a court which has no jurisdiction thereof, the court should dismiss it³ unless provision is made for the transfer of cases under such circumstances by statute,⁴ procedural rules,⁵ or the constitution.⁶

In this regard, state constitutional provisions,⁷ statutes,⁸ and procedural rules⁹ frequently authorize or require the transfer of cases from one court to another within the state. Such provisions are remedial in nature and are designed to prevent a case from being totally precluded because the case was brought in the wrong court.¹⁰ Trial judges should studiously and timely consider a request to transfer based on lack of subject matter jurisdiction in order to assure that jurisdiction is proper.¹¹ Citizens who become litigants in state courts are entitled to be assured early on in the life of the litigation that they are in the right court, and interlocutory appeals or, even worse, a trial on the merits in the wrong court are costly and time-consuming.¹²

Where the applicable provision stipulates the grounds for transfer, a transfer on other grounds is improper.¹³ Thus, a statute authorizing a court lacking jurisdiction over an action filed in such court to transfer the action to another court having jurisdiction does not authorize a court with jurisdiction over an action to transfer it to another court.¹⁴

A trial court with in personam jurisdiction in a civil forfeiture action, but lacking in rem jurisdiction, must transfer the case to the court with in rem jurisdiction inasmuch as the local action rule precludes a court lacking in rem jurisdiction from transferring title to property.¹⁵

Prospective or retrospective operation of statutes.

A general statute relating to the transfer of cases between courts is applicable to a court which came within the purview of the statute after its enactment although not originally within the purview of it.¹⁶ A statute which authorizes the transfer of cases from one court to another relates to procedure only and applies to actions pending at the time the statute goes into effect.¹⁷ However, a plaintiff who files a claim in one court may not increase the amount of the claim beyond the civil jurisdictional limits of that court after the case is transferred to another court pursuant to a statute in effect prior to a statutory amendment allowing the plaintiff to amend the pleadings to increase the amount of the claim above the transferor court's jurisdictional limits.¹⁸

Waiver of right to transfer.

The right to have a case transferred from one court to another may be waived¹⁹ by consent or failure to move for transfer within prescribed time limits.²⁰

CUMULATIVE SUPPLEMENT

Cases:

If a family court presiding over a petition for infant guardianship learns that the basis for the petition, in whole or in part, is an allegation of child abuse and neglect, then the family court is required to remove the petition to circuit court for a hearing thereon. [A.A. v. S.H.](#), 836 S.E.2d 490 (W. Va. 2019).

[END OF SUPPLEMENT]

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Footnotes

- 1 Ind.—[Figg & Muller Engineers, Inc. v. Petruska](#), 477 N.E.2d 968 (Ind. Ct. App. 1985).
Mass.—[Stoneman v. Coakley](#), 266 Mass. 64, 164 N.E. 802 (1929).
- 2 Mo.—[State ex rel. Dunham v. Nixon](#), 232 Mo. 98, 133 S.W. 336 (1910).
- 3 Cal.—[Cook v. Winklefleck](#), 16 Cal. App. 2d Supp. 759, 59 P.2d 463 (App. Dep't Super. Ct. 1936).
S.C.—[Ross v. Richland County](#), 270 S.C. 100, 240 S.E.2d 649 (1978).
- 4 Ill.—[Ferndale Heights Utility Co. v. Illinois Commerce Com'n](#), 112 Ill. App. 3d 175, 67 Ill. Dec. 854, 445 N.E.2d 334 (1st Dist. 1982).
Wis.—[In re Jones' Estate](#), 207 Wis. 354, 241 N.W. 387 (1932).
- 5 Mich.—[Boyd v. Nelson Credit Centers, Inc.](#), 132 Mich. App. 774, 348 N.W.2d 25 (1984).
Pa.—[Local 302, Intern. Ass'n of Fire Fighters v. City of Allentown](#), 55 Pa. Commw. 599, 423 A.2d 1119 (1980).
- 6 N.Y.—[Offner v. Rothschild](#), 87 Misc. 2d 565, 386 N.Y.S.2d 188 (Sup 1976).
- 7 Miss.—[City of Ridgeland v. Fowler](#), 846 So. 2d 210 (Miss. 2003).
- 8 Del.—[Carney v. Qualls](#), 514 A.2d 1126 (Del. Super. Ct. 1986).
Ohio—[Barnes v. Univ. Hosps. of Cleveland](#), 119 Ohio St. 3d 173, 2008-Ohio-3344, 893 N.E.2d 142 (2008).
- 9 Fla.—[Kawebulum v. Thornhill Estates Homeowners Ass'n, Inc.](#), 755 So. 2d 85 (Fla. 2000).
Miss.—[Germany v. Germany](#), 123 So. 3d 423 (Miss. 2013).

Motion to dismiss

Under uniform transfer rules, a motion to dismiss based upon lack of venue and/or jurisdiction is to be considered a motion to transfer to the proper court.

Ga.—[Southern Ry. Co. v. Lawson](#), 174 Ga. App. 101, 329 S.E.2d 288 (1985).

10 Del.—[Carney v. Qualls](#), 514 A.2d 1126 (Del. Super. Ct. 1986).

11 Miss.—[Trustmark National Bank v. Johnson](#), 865 So. 2d 1148 (Miss. 2004).

12 Miss.—[Trustmark National Bank v. Johnson](#), 865 So. 2d 1148 (Miss. 2004).

13 La.—[James v. St. Charles Hotel Co.](#), 142 La. 464, 77 So. 117 (1917).

N.Y.—[Dalliessi v. Marbach](#), 56 A.D.2d 858, 392 N.Y.S.2d 316 (2d Dep't 1977).

14 Cal.—[Cook v. Winklefleck](#), 16 Cal. App. 2d Supp. 759, 59 P.2d 463 (App. Dep't Super. Ct. 1936).

15 Fla.—[Ruth v. Department of Legal Affairs](#), 684 So. 2d 181 (Fla. 1996).

16 Okla.—[Acme Oil & Gas Co. v. Cooper](#), 1934 OK 324, 168 Okla. 346, 33 P.2d 191 (1934).

17 Cal.—[Goldie v. Superior Court in and for San Diego County](#), 13 Cal. App. 2d 12, 56 P.2d 261 (4th Dist. 1936).

The trial court did not deny an elderly adult his constitutional due process rights by failing to transfer an elder abuse case to the probate court and failing to appoint counsel for the adult to assist him in reviewing accountings, as the adult's guardian ad litem never requested that the case be transferred to the probate court, and trial court did not have a sua sponte duty to transfer the case.

Cal.—[Knox v. Dean](#), 205 Cal. App. 4th 417, 140 Cal. Rptr. 3d 569 (4th Dist. 2012).

18 Va.—[Afify v. Simmons](#), 254 Va. 315, 492 S.E.2d 138 (1997).

19 N.Y.—[Brinn v. Rinderman](#), 38 Misc. 792, 78 N.Y.S. 921 (App. Term 1902).

20 N.C.—[Amey v. Amey](#), 71 N.C. App. 76, 321 S.E.2d 458 (1984).

As to the time to request a transfer, see § 265.